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7th DISTRICT
SHELLY SHORT

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May 1, 2014

The Honorable Bob Ferguson
Washington State Attorney General
PO Box 40100
Olympia, WA 98504-0100

Re: Request for Opinion — Transfer & Use of Municipal Utility Funds

Dear Attorney General Ferguson:

I am writing to respectfully request an opinion relating to the transfer and use of certain funds held by municipal utilities, including the interplay and limits of RCWs 35.23.535, 35.37.020, 35.92.050, and 43.09.210.

Background

The City of Chewelah ("the City") has owned and operated an electric utility since 1907. For the past 50 years, the City has transferred surplus funds from the utility to its current expense fund. The City made these transfers as a function of its budget, approved by votes of its City Council. The City based these transfers on its understanding of RCW 35.23.535¹ and 35.37.020.²

In 2012, the City was the subject of an audit performed by the State Auditor (Report No. 1008220), which made multiple recommendations, such as the development of a cost allocation plan (which the City is following). There was also a specific finding made on page 6 of the report: "Surplus transfer amounts should be minimal and infrequent as utility rates should be set to cover the cost of operating and maintaining the utility".

The City has complied with this finding, resulting in very real fiscal consequences, such as closing the public swimming pool, closing the library, and reduction of two employees paid from the current expense fund. This has resulted in much public discussion of the City's practices and the State Auditor finding. The City is prepared to follow the advice given, but it would be helpful to have a legal opinion as to the meaning and limits of the applicable law. Similarly, if there is an ambiguity or

¹ RCW 35.23.535 provides in pertinent part, "...If the rates in force produce a greater amount than is necessary to meet operating and maintenance charges, the rates may be reduced or the excess income may be transferred to the city's current expense fund..."

² RCW 35.37.020 provides in pertinent part, "...Any surplus in the waterworks fund, lighting fund, *cemetery fund, or other like funds at the end of the fiscal year shall be paid into the current expense fund except such part as the council by a finding entered into the record of the proceedings may conclude to be necessary for [certain enumerated purposes]..."

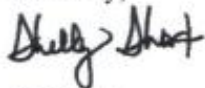
Issues & Questions Presented

Given the background provided, it would be very helpful to have discussion, clarification, and answers to the following questions:

1. If a surplus exists in a utility fund on a yearly basis after all required obligations are paid according to RCW 35.23.535, is a city *required* to reduce rates for that utility, or may a city transfer excess monies to the current expense fund on a routine basis?
 - a. RCW 35.23.535 seems to indicate that, after all maintenance and operating charges have been paid (which include provision for future expansion, depreciation, debt), *then either* the rates can be reduced *or* the excess income may be transferred to the city's current expense fund.
 - b. Established law (including RCW 43.09.210) would seem to be that one fund cannot subsidize another fund. However, RCW 35.37.020 states in pertinent part (italics supplied), "any deficit for operation and maintenance of *utilities* and institutions owned and controlled by cities and towns having less than twenty thousand inhabitants, over and above the revenue therefrom, shall be paid out of the current expense fund". Is this not subsidizing? What are the limits for such transfers?
2. What is the purpose of the four percent allowed by RCW 35.23.535?
 - a. RCW 35.23.535 provides in pertinent part (italics supplied), "The term 'maintenance and operating charges, as used in this section includes all necessary repairs, replacement, interest on any debts incurred in acquiring, constructing, repairing and operating plants and departments and all depreciation charges. *This term shall also include an annual charge equal to four percent on the cost of the plant or system, as determined by the state auditor to be paid into the current expense fund, except that where utility bonds have been or may hereafter be issued and are unpaid no payment shall be required into the current expense fund until such bonds are paid.*"
3. What authority determines if a city's utility rates are "reasonable" under the applicable law? RCW 35.92.050 would seem to give that authority to the city alone.

I very much look forward to your views on this matter, including any ancillary topics or questions that occur to you as you work through these issues. I appreciate your time and expertise. If I may provide any additional information, please do not hesitate to contact me.

Sincerely,



Shelly Short
Representative – 7th Legislative District
State of Washington

cc: The Honorable Dorothy L. Knauss, Mayor, City of Chewelah